(1) Supreme Court, U.S.
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No. 991674

IN THE

Supreme Court of the United States

MARTIN VANDEL,

Petitioner

v.

STANDARD MOTOR PRODUCTS, INC.

On Petition For Writ of Certiorari
To The United States Court of Appeals for
the Second Circuit

PETITION FOR WRIT OF CERTIORARI

Martin Vandel, *pro se*
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(203) 466-3313

52 pp

QUESTION PRESENTED

Was petitioner denied his constitutional right to trial by jury when the district court granted a summary judgment against him in the face of evidence of disputed material facts?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

QUESTION PRESENTED..... i
LIST OF PARTIES..... ii
TABLE OF CONTENTS..... ii
TABLE OF CITATIONS..... ii
OPINIONS BELOW..... 1
JURISDICTION..... 2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....2
STATEMENT OF THE CASE..... 3
REASONS FOR GRANTING MY PETITION..... 8
CONCLUSION..... 17

INDEX TO APPENDICES

APPENDIX A - Summary order of the United States Court of Appeals for the Second Circuit in this case, dated December 21, 1999.....A1

APPENDIX B - Ruling on defendant's motion for summary judgment in this case, U.S. District Court, District of Connecticut, dated April 30, 1999.....A7

TABLE OF CITATIONS

Cases: **Page**

Chambers v. TRM Copy Centers Corp., 43 F.3d 29 (2d Cir. 1994) 10

Charrette v. S.M. Flickinger Co., Inc., 806 F.Supp. 1045 (N.D.N.Y. 1992) 10

Danzer v. Norden Systems, Inc., 151 F.3d 50 (2d Cir. 1998) 11

Quarantino v. Tiffany & Co., 71 F.3d 58 (2d Cir. 1995) 9

Rosen v. Thornburgh, 928 F.2d 528 (2d Cir. 1991) 10

Viola v. Philips Medical Systems of North America, 42 F.3d 712 (2d Cir. 1994) 11

Statutes:

Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34 . . . . 2, 7, 9, 11

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17 . . . . 2, 7, 10, 11

Constitution:

The due process of law clause of the Fifth Amendment 2, 7, 8, 12

The Seventh Amendment's right of trial by jury 2, 7, 8, 12

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The summary order of the United States Court of Appeals for the Second Circuit is unreported.

The district court's ruling on defendant's motion for summary judgment is not published.

JURISDICTION

The date on which the United States court of Appeals for the Second Circuit decided my case was December 21, 1999.

No petition for rehearing was filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The due process of law clause of the Fifth Amendment.

2. The Seventh Amendment's right of trial by jury.

3. Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34.

4. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17.

STATEMENT OF THE CASE

I am 50 years old and born in Poland. I am a graduate engineer, and emigrated to United States in 1976. I have been a U.S. citizen since 1981. During the period 1988 through July 1995, I was employed by defendant's EIS Brake Parts Division as a Senior Tool Design Engineer.

Since my early childhood in Poland, I dreamed about America. My dream was realized. In the beginning of eighties, I became a citizen of this beautiful country. I worked hard and educated myself to be a good citizen of my new fatherland. In 1988, I was employed by Standard Motor Products as a Senior Mechanical Engineer. During

my seven years employment, I designed machines and equipment for the production of brake parts. In the beginning, I impressed my supervisor with my innovative design skills. The Company asked me to lead a group of young engineers and share my experience, knowledge with them. One of these engineers was a 19 year old individual named John Montgomery. In addition to his work under my supervision, John studied engineering at a local college. I spent many hours tailoring John to his new profession (number of documents is awaiting to be introduced to jurors).

In 1993 the Company terminated some supervisors. The newly reorganized team was instructed to reveiw employees in regards to their age and ethnicity. From this

time, I noticed less cooperation among my coworkers. I began to hear my supervisor, John Wolf, making offensive ethnic slurs, including "dumb Polack". I informed Personal Director (Friedman) about it. No action was taken.

Finally, in May 1995, I was told: "As a result of our need to reorganize the area in which you work and other departments, we will end your employment as of July 7, 1995."

They asked me to sign the agreement "Title 7 of the 1969 Civil Rights Act and Age Discrimination in Employment Act Waiver" offering me 6 weeks pay. I never signed it and decided to hire a lawyer - Mr. Peter Kelly. When I started the legal battle, the Company changed the story of

termination. They produced memos which discredited me. Most of these were hand written documents with postponed dates. So far, those documents have confused judges and the legal system. With help of Attorney Kelly, I supply affidavit of Joseph Gordon, (my former Engineering Manager) and A. Langello (Tool Engineer). Mr. Langello is another ten years younger individual who was trained by myself. This legal process was very costly for me; so far it has cost $7,000.

Reading the "Discrimination Act" which is posted in every company I ask myself: why we have double standard in justice system?

I feel like I have been cheated by the double standard of the

law.

I have strong feeling that I have already been discriminated against twice: both by Standard Motor Product and by the American judicial system. My constitutional rights have clearly been violated, because my case could not be presented to jurors.

I ask you help me to restore my constitutional rights and that I be treated like an American citizen. I demand that my case be presented to jurors.

REASONS FOR GRANTING MY PETITION

The petition should be granted because an essential ingredient of my claims involves the *intent* of the defendant.

Is it possible for judges to detect discriminatory intent by reading defense affidavits? Of course it is not. Yet the Court of Appeals appears to conclude that the quality of my evidence was not good enough to defeat a summary judgment. To me, this is an abuse of the legitimate purpose of summary judgment proceedings, and - when applied in a case such as mine - it works to deny my constitutional right to have my claims decided by a jury; thus, it also violates my constitutional right to due process of law.

As I understand the decision of the Court of Appeals, they

did not fully accept the reasoning of the district court judge, since they assumed that I had established a *prima facie* case with the documents I filed to oppose summary judgment. The reason they gave for upholding the judgment - both as to my national origin and age discrimination claims - was that I did not present evidence from which the jury could find that defendant's claimed reason for firing me was a sham and the true reason was discrimination. In other words, they concluded that the substantial amount of evidence I presented to oppose the motion was *not sufficient* to successfully counter the defendant's evidence. Essentially, the "trial" of my claim was held by judges reading documents submitted by both sides, evaluating them, and deciding I had come up short. If they can do this in my case, they can do it in anyone else's case. Aside

from my personal shock at this technique of deciding cases, this practice results in a very dangerous cutting into every citizen's rights to a jury trial and due process of law under the federal constitution. Before I discuss this in more detail, you should be aware of the evidence I did submit in opposing the motion. Following are important facts which were either totally ignored or consciously "swept under the rug" by the judges below:

- I had worked at defendant's EIS Brake Parts Division for seven years, and until my 1995 performance review by John Wolf, all of my previous reviews were satisfactory.

- I had made two written complaints to his employer concerning my supervisor's harassing behavior and insults based upon my ethnic background.

- The affidavit of Joseph Gordon, former engineering manager at defendant's EIS

Brake Parts Division, supported my claims of job harassment and ethnic slurs. Although the District Court relied upon a June 28, 1993 review by Gordon to support its conclusion that I was not qualified to do my job because of personality problems, a reading of that review makes it clear that Gordon . supported me. Gordon's affidavit in opposition to defendant's summary judgment motion also makes it clear that he had not altered his earlier favorable opinion of me.

- In January of 1997, I obtained a position with the Echlin Company in Branford as a design engineer. My performance review for my first year at Echlin, done in January 1998, rated me as a competent employee. In particular, it noted that I was willing to be helpful to employees in another division, that I have good communication with others, and that I work well with people and am liked by coworkers.

- In considering plaintiff's my age discrimination claim, the District Court - based upon an affidavit submitted by defendant - concluded that no one was hired to replace me. In reaching this conclusion, the court completely ignored the affidavit of

> Anthony Langello which was submitted in opposition to the summary judgment motion. Langello, a former tool design engineer at defendant's EIS Brake Parts Division, was well acquainted with me during his employment, since we worked in the same department. Langello's affidavit relates that he heard racial or ethnic slurs directed toward me at various times while he was employed by defendant. Additionally, Langello states that when I was terminated, my job was assumed by an employee who was in his twenties.

I have been informed that, in deciding a motion for summary judgment, the court cannot make judgments about credibility in the face of competing factual claims. Not only can the trial court not ignore my evidence when deciding a summary judgment motion, when it is met with facts from which several different conclusions may be drawn, the inferences drawn from the underlying facts must be viewed in a light most favorable to the non-movant.

Quarantino v. Tiffany & Co., 71 F.3d 58, 64-65 (2d Cir. 1995). Here, as in the *Quarantino* case, the district court improperly relied upon defendant's supporting documentation to the exclusion of my evidence.

Like most employment discrimination cases, this case does not contain any "smoking gun" in terms of clear evidence of discriminatory intent. This is because employment discrimination is often accomplished by manipulations and cloaked in protestations of innocence. See *Rosen v. Thornburgh*, 928 F.2d 528, 533 (2d Cir. 1991); *Charrette v. S.M. Flickinger Co., Inc.*, 806 F.Supp. 1045, 1053 (N.D.N.Y. 1992). Concerning my claim of discriminatory harassment on the job because of my ethnic background, the claims made in my affidavit are substantiated by the

two memorandums I wrote to Friedman, in April and December, 1994. The claim is further corroborated by the affidavits of Joseph B. Gordon, who was defendant's engineering manager at the time; and Anthony L. Langello, a tool design engineer. Circumstances contributing to a permissible inference of discriminatory intent may include criticism of an employee's performance in ethnically degrading terms. *Chambers v. TRM Copy Centers Corp.*, 43 F.3d 29, 37 (2d Cir. 1994.)

It is interesting to note defendant's actions in response to my memos. The April, 1994 memorandum to Friedman was ignored. After the December, 1994 memorandum, I was told by Friedman that if I did not learn how to cooperate with my supervisor, Wolf, I would be fired. The

following May, I was given a proposed letter of termination and promised a severance package in return for my agreement to the terms of that letter, which included a waiver of any claims of age and national origin discrimination.

One of the intriguing aspects of defendant's claim given that I was allegedly fired because I was unable to get along with my fellow workers and was "unmanageable" - is that it raises the question of how I was able to function so well during the first six years of my employment at defendant's EIS Brake Part Division, and how - after this one year period of "unmanageability" - I was able to function in my new job at Echlin in such manner that I was cited for having good communication with others and being

enjoyable to work with.

As the above discussion shows, the record before the court contained plenty of evidence from which a jury could find that defendant's rationale for terminating my employment was a pretext, and that a combination of national origin and age discrimination was the true reason. I have been told that summary judgment is proper only if the evidence of discriminatory intent is so slight that no rational jury could find in plaintiff's favor. *Viola v. Philips Medical Systems of North America*, 42 F.3d 712, 716 (2d Cir. 1994). In my case, since I showed that numerous issues of material fact exist - concerning all essential elements of my claims - the case should not have been decided "on the papers." *Danzer v. Norden Systems, Inc.*, 151 F.3d 50, 54 (2d Cir. 1998).

CONCLUSION

This case presents a question of highest importance - whether a citizen claiming civil rights violations in his employment may have the courthouse door slammed in his face by a big corporation, never to have a chance to permit a jury to decide his claim - all because a judge has looked through some papers and decided that the company's papers tell a better story. The lawyer who represented me in the lower courts explained that this procedure is called "summary judgment" and explained its background. As a person with scientific training, I certainly can understand how some cases simply lack necessary evidence which may cause them never to reach trial. I also understand how this summary judgment procedure is okay, for example, if I am suing someone who has signed a promissory note to me and

then refuses to pay. However, in a case - such as mine - where I have presented detailed affidavits to support my civil rights claims, I think it is an abuse of my constitutional rights to a jury trial and due process of law to allow a judge to read a pile of papers and decide to throw my case out.

Accordingly, I respectfully request that you grant my petition for a writ of certiorari.

Respectfully submitted,

MARTIN VANDEL, *pro se*, Petitioner

71 Mountaintop Lane
New Haven, CT 06513
(203) 466-3313

Dated at New Haven, CT 3.27, 2000

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTLAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE,, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 2111 day of December, one thousand nine hundred and ninety-nine.

PRESENT:

HON. JOSEPH M. McLAUGHLIN,
HON. CHESTER J. STRAUB,
HON. ROBERT D. SACK,
Circuit Judges.

[USCA file stamp, dated Dec. 21 1999]

MARTIN VANDEL,
Plaintiff-Appellant,

SUMMARY ORDER
No. 99-7757

V.

STANDARD MOTOR PRODUCTS, INC.,
Defendant-Appellee.

Appearing for Appellant: Peter A. Kelly, New Haven, CT

Appearing for Appellee: Michael P. Kaelin, Kelley Drye & Warren LLP, Stamford, CT

Appeal from the United States District Court for the District of Connecticut (Warren W. Eginton, *Judge).*

AFTER ARGUMENT AND UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the District Court is hereby AFFIRMED.

Plaintiff-Appellant Martin Vandel appeals from ajudgment of the United States District Court for the District of Connecticut (Warren W. Eginton, *Judge),*

granting summary judgment to his former employer, Defendant-Appellee Standard Motor Products, Inc., and dismissing Vandel's complaint alleging employment discrimination in violation of the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. §§ 621-34, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e to 20OOe-17. The District Court granted summary judgment dismissing the complaint on the ground that Vandel failed to make out *a prima facie* case with respect to his national origin and age discrimination claims. On appeal, Vandel argues that the judgment should be reversed and the case remanded to the District Court for trial because he produced sufficient evidence of age and national origin discrimination to survive summary judgment.

Wereviewagantofsummaryjudgmentdenovo,withallinferencesdrawninfavor of the nonmoving party. *Stuart v. American Cyanamid Co.*, 158 F.3d 622, 626 (2d Cir. 1998).

With respect to Vandel's ADEA claim, even if plaintiff has met his *de minimis* burden of establishing *a prima facie* case of age discrimination, he has not presented evidence from which a fact-finder could reasonably conclude that Standard Motor Products' reason for plaintiff s termination-his interpersonal difficulties- was pretextual and that the real reason was discrimination. *See Brennan v. Metropolitan Opera Assn,* 192 F.3d 310, 317 (2d Cir. 1999). Thus, we affirm the grant of summary judgment on grounds different from those relied on by the District Court. *See Shumway v. United Parcel Serv., Inc., 1* 1 8 F.3d 60, 63 (2d Cir. 1997).

As to Vandel's Title VU claim based on national origin, which rests substantially on allegations of the use of derogatory epithets by one of Vandel's supervisors who ultimately participated in the decision to terminate him, we affirm the grant of summary judgment on grounds slightly

different from those relied on by the District Court, to the extent that the District Court explicitly articulated its grounds for decision. Assuming that Vandel made *a prima facie* showing of discrimination based on national origin, the burden shifted to Standard Motor Products to articulate a legitimate, non-discriminatory reason for the allegedly discriminatory action. *See Stratton v. Departmentfor the Aging,* 132 F.3d 869, 879 (2d Cir. 1997). While Standard Motor Products clearly met this burden, Vandel failed to produce evidence that would permit a rational factfinder to infer that Standard Motor Products' rationale was merely pretextual, ie., "a mask for unlawful discrimination." *Fisher v. Vassar College,* 114 F.3d 1332, 1337 (2d Cir. 1997) (en banc). Therefore, summaryjudgment was properly granted.

We have examined all of Vandel's contentions and find them to be without merit. The judgment of the District Court is affirmed.

FOR THE COURT:
KAREN GREVE MILTON, Acting Clerk

/S/ Date: 12/21/99

RALPH A. ANDERSON, Deputy Clerk
ACTING OPERATIONS MANAGER

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MARTIN VANDEL,	:	
Plaintiff	:	
	:	
V.	:	3:96-CV-01295 (WWE)
	:	
STANDARD MOTOR	:	
PRODUCTS, INC.	:	
Defendant	:	

RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Plaintiff Martin Vandel ("Vandel") brings this litigation pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000e et *seq.* (Title VII) and the Age Discrimination in Employment Act, 29 U.S.C. Sections 621 et seq. ("ADEA") . Vandel asserts that he was

terminated from his employment at defendant Standard Motors Products, Inc. ("Standard") due to his national origin (Polish) and because of his age (forty-seven). Defendant has moved for summary judgment on both these claims.

STATEMENT OF FACTS

The Court summarizes only those facts deemed necessary to an understanding of the issues raised by, and decision rendered on, this Motion.

Vandel was hired by Standard in 1988, at the age of thirty-eight, to work in its EIS Brake Parts Division ("EIS") It is Standard's position that Plaintiff's overall performance, in particular his interpersonal skills, while in this position did not meet Standard's expectations. Four different supervisors over a period of three years had documented problems with Vandel's interpersonal skills. After

numerous written and verbal warnings and counselings regarding his troubling interpersonal skills, Vandel was allegedly discharged due to his failure to get along with his supervisors, his refusal to respect their authority, and his inability to work as a team member, which was of great import to the assignments given EIS. According to Standard, Vandel was "simply unmanageable".

In or around 1992, EIS transferred its business/plant from Middletown to Berlin. At that time, Vandel reported to one Mr. Genovese and one Mr. Gordon. It is documented by affidavit that it was at this time Vandel's supervisors began to experience increasing difficulties managing Vandel. One of the most serious problems with Vandel's job performance centered on his inability to interact on a professional level with other staff at EIS, as well as well as his supervisors, Genovese and Gordon, Eric McAlexander, the plant manager, and ultimately one John

Wolf.

In October, 1992, Genovese documented these problems in a memorandum to Vandel. In that memorandum, Genovese indicated that Vandel's

> attitude and cooperation have been far removed from the team effort that is so essential in maintaining consistency in our manufacturing process which is ultimately the responsibility of everyone in manufacturing support.

Specifically, Genovese noted that Vandel resisted the performance of any tasks he deemed "menial", failed to respect authority, and established and worked on his own schedule. Genovese warned Vandel that if his "attitude and cooperation does not improve immediately, my only course of action will be a request of termination." This memorandum, giving Vandel written warning as of October, 1992, of the seriousness of his interpersonal problems and the incumbent ramifications of this attitude, was also sent to McAlexander and one John Geoffrion,

EIS's personnel manager in Berlin.

In or about late 1993, at a meeting for a certain project, Vandel declared that Genovese was not his supervisor on this project and that Genovese was not intelligent enough to provide him with direction.

Shortly thereafter, Genovese informed McAlexander of this incident. In a letter to McAlexander detailing the incident, Genovese requested assistance and support in dealing with Vandel. According to Genovese, Vandel had alienated himself from the other designers and toolmakers, and the problem needed to be addressed immediately.

In April, 1993, Vandel's inability to interact with his colleagues was documented in his 1992/1993 performance evaluation, prepared by Genovese. The 1992 evaluation indicates that Vandel's technical skills were of a high caliber and that Vandel's technical skills or

professional knowledge had never been questioned. The 1992 Evaluation ranks Vandel as "adequate" with respect to the categories of human relations/communications, leadership, cooperation with other departments. "Adequate" is the second lowest of the five possible ratings on the evaluation.

Vandel refused to sign this evaluation, and requested that it be re-done by Gordon or McAlexander.'/

Both Gordon's and McAlexander's reviews echoed that of Genovese. Although both were highly laudatory of his technical and professional skills, Gordon noted that Vandel's interpersonal skills and working with others whom Vandel considered to have less technical talent needed improvement. Similarly, McAlexander wrote that Vandel's

> ability to listen to and work with others of lesser technical skill has presented problems. Martin's pride in his accomplishments does not allow him to accept ideas for

'/vandal never raised the issues of national origin or age discrimination regarding the low evaluations for interpersonal skills and the like.

> possible improvement in his designs by others. He also does not allow him [sic] to be questioned as to why he chose a particular direction. Because of this, he does not function well in a team environment . . . In addition, Martin sees himself as being "above" certain tasks such as detailing.

In response, Vandel wrote a memorandum to McAlexander in which he admitted to his lack of cooperation but that he would try in the future to cooperate in the "best manner possible."

At the same time, Vandel wrote a memorandum to the Personnel Department, focusing on his complaints with his evaluations. Firstly, Vandel complained that the evaluations were "polluted (perhaps too strong a word) . . . and being distorted as being detrimental to foreigners such as myself. . . ." In one portion of the memorandum, Vandel

alleges that it appeared that Standard was trying push him out of the company and then retracts that statement in the same memorandum. At his deposition, Vandel testified as having no difficulties with Genovese whatsoever. [2/]

In 1994, Wolf became Vandel's supervisor and began to experience the same interpersonal and other related problems that Genovese had documented in his October 6, 1992 memorandum.

In April, 1994, Vandel advised Gordon that McAlexander had called him "a dumb Polack." Gordon instructed Vandel to write a memorandum to the Director of Personnel, describing all his problems in relation to his Standard employment. The memorandum contains no reference to age discrimination or the alleged "dumb Polack" claim.

In December, 1994, Vandel again wrote to the Director of Personnel, alleging that Wolf insulted Vandel

2/ Again, there is no mention of age discrimination with respect to his Polish heritage.

Again, there is no reference to age discrimination or the alleged "dumb Polack" claim.

Upon receipt of the memorandum, the Director of Personnel immediately investigated the accusations made by Vandel. After meeting with Wolf, he requested that Vandel provide him with more details and specifics to better assess his complaint. Vandel was unable to provide any specific examples of ethnic discrimination or harassment. At the close of the investigation, the Director determined that there was no basis to Vandel's claim and, in fact, it was Vandel who was making the disparaging comments concerning Wolf's professional competence, in that, while Vandel held a four-year degree in engineering, Wolf did not. It was the Director's conclusion that it was plaintiff, not Wolf, who exhibited a lack of respect for the

other's professional competence.

Vandel's problems with interpersonal relations, insubordinate behavior and difficulty with supervisors continued, and indeed escalated, during late 1994 and early 1995. In December, 1994, Wolf wrote a memorandum to his supervisor requesting the termination of Vandel. A meeting was held thereafter among Vandel, Wolf and Paulus. During the meeting, Vandel was again told that he needed to cooperate and be a team player, that Wolf was his boss and that if could not get along with Wolf, the company would be forced to terminate him.

As of April, 1995, problems with Vandel's interpersonal skills persisted, and the relationship between Wolf and Vandel was not improving. In his 1994 evaluation, Wolf emphasized Vandel's continuing problems in the area of human communications/relations, cooperation with other departments and managers and

overall attitude. In addition, Wolf noted a problem with support Vandel was giving, or not giving, on the shop floor, his troubleshooting on the shop floor, his resistance to working with a team, and his initiative and stability. Accordingly, Vandel received the lowest ratings possible in these areas.

Following this evaluation, a meeting took place among Vandel, Wolf and Paulus. Vandel was advised that the decision to terminate him had been made by Wolf, Paulus and the Director of Personnel. Vandel was advised that he was being terminated due to: failure to get along with his fellow employees; failure to get along with his boss, Wolf; resistance to authority; inability to work on a team in the Master Cylinder Department; and for being difficult to manage.

Vandel challenged this decision, stating that he had documentation to support his discriminatory treatment at

the hands of Wolf. Paulus told him to submit such documentation. Although Vandel was given several months to document his alleged treatment, he submitted nothing to Standard. Nothing was ever reported to Standard regarding age discrimination, either.

Vandel was given severance which, *inter alia,* contained a favorable reference. Vandel's last day at Standard was July 14, 1995. At the time of his termination, three employees remained in Vandel's department. Louis Menta was sixty-one years of age, Warren David was fifty-one years of age, and Tony Langello was thirty-four years of age. Vandal was not replaced; rather, his work assignments were divided among these three men.

LEGAL ANALYSIS

I. The Standard of Review

In a motion for summary judgment the burden is on

the moving party to establish that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law. Fed. R. C.V. P. 56(c). See also Anderson v. Liberty Lobby, 477 U.S. 242, 256 (1986) (plaintiff must present affirmative evidence in order to defeat a properly supported motion for summary judgment).

If the nonmoving party has failed to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof at trial, then summary judgment is appropriate. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). "In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *id. at 322-23. Accord,* Goenaga v. March of Dimes Birth Defects Foundation, 51 F.3d 14, 18 (2d.

Cir. 1995)(movant's burden satisfied by showing if he can point to an absence of evidence to support an essential element of nonmoving party's claim).

The court is mandated to "resolve all ambiguities and draw all inferences in favor of the nonmoving party. . . ." Aldrich v.Randolph Cent. Sch. Dist., 963 F.2d. 520, 523 (2d Cir.), *cert.denied*, 506 U.S. 965 (1992) "Only when reasonable minds could not differ as to the import of the evidence is summary judgment proper.Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir.) , *cert. denied*, 502 U.S. 849 (1991). If the nonmoving party submits evidence which is "merely colorable", or is not "significantly probative," summary judgment may be granted. Anderson, 477 U.S. at 249-50.

II. The Standard As Applied

The elements of proof are the same under Title VII and ADEA. Woroski V. Nashua Corp., 31 F-3d 105, 108-

09 (2d Cir. 1994). A party must set forth, first, his *prima facie* case and, after the defendant sets forth a legitimate, non-discriminatory reason for defendant's actions, the plaintiff must demonstrate that this reason is pre-textual and that the defendant intentionally discriminated against him in taking the negative action defendant took. "[T]he ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff." Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981).

A prima facie case under Title VII or ADEA consists of four elements:

1) that a plaintiff was in a protected class;

2) that he was qualified for the position at issue;

3) that he was discharged; and

4) that the discharge occurred under circumstances

giving rise to an inference of discrimination. Viola v. Philips Med. Svs., 42 F.3d 712, 716 (2d Cir. 1994).

In his complaint, Vandel claims that Standard discriminated against him and terminated his employment in April, 1995, due to his national origin (Polish) and his age(47). However, Vandel cannot meet either the second or fourth prong of a *prima facie* case of discrimination based on either national origin or age; thus, it is not necessary for Standard to set forth any legitimate, non-discriminatory reasons for Vandel's terminations. [3]/

As to the second element of a *prima facie* case, Vandel was not qualified to do his job. It takes more than technical proficiency to meet the expectations of an employer and Vandel had four years of continuous notice of this. In determining whether an employee meets the

3/ It should be noted, however, that Standard set forth several legitimate, non-discriminatory reasons for Vandal's discharge.

qualifications of his job and whether it is satisfactory, courts may rely -- as they often must -- on evaluations rendered by supervisors. Meiri v. Dacon, 759 F.2d 989, 995 (2d Cir. 1985). See also .Stein v. McGraw-Hill, Inc. 782 F. Supp. 207, 212-13 (S.D.N.Y. 1992) (poor performance evaluations allows court to draw inference that reason for termination was quality of work, and not unlawful discrimination.) Job performance cannot be assessed in a vacuum; the ultimate inquiry is whether an employee's performance "meets his employer's legitimate expectations." Huhn v. Koehring Co., 718 F.2d 239, 244 (7th Cir 1983). As detailed above, the problems with Vandel's interpersonal skills and poor attitude, as documented on numerous occasions by **all** of his

supervisors, demonstrates that Vandel was not meeting Standard's legitimate job expectations and was, therefore, not qualified for the job. He, therefore, fails to make a *prima facie* case of discrimination.

Furthermore, a thorough review of the record demonstrates no evidence of age discrimination. Vandel, with no details, alleges that he is forty-seven years of age and that his job was assumed by an individual under the age of thirty. Vandel has proffered nothing in support of these claims. In his deposition, Vandel admitted that no comments were ever made disparaging his age or indicating that the company was prejudiced against older workers. Vandel conceded that there were " a lot" of people over the age of forty at Standard, who were not terminated or discriminated against by the company, including two of the three individuals in Vandells department at the time of his termination.

In contrast to his complaint, Vandel testified that he did not know who, if anyone, replaced him at Standard, let alone "an employee less than 30 years old." Pursuant to an affidavit submitted by Standard, no one was hired to replace Vandal. Rather, his work was assumed by his coworkers.

Finally, the three gentlemen by whom the decision was made to terminate Vandal were forty-one, forty-seven and fifty-two years of age, respectively. This further negates any inference of discriminatory animus with respect to Vandal's termination. *See* Williams v. Brooklyn Gas, 819 F.Supp. 214, 224-25 (E.D.N.Y. 1993). Accordingly, Vandel fails to meet the fourth element of a *prima facie* case of age discrimination, in that he has presented no evidence that his termination occurred under circumstances giving rise to an inference of discrimination.

CONCLUSION

For the reasons set forth above, Vandal has failed to meet *his prima facie* case of discrimination with regard to his age or national origin. Accordingly, Standard's Motion for Summary Judgment [Doc. No. 19] is GRANTED. The Clerk is directed to close this case and enter judgment for defendant.

SO ORDERED

/S/

WARREN W. EGINTON

SENIOR UNITED STATES DISTRICT JUDGE

Dated at Bridgeport, Connecticut this 30th day of April, 1999.

EIS BRAKE PARTS

EIS BRAKE PARTS
DIVISION OF STANDARD
MOTOR PRODUCTS, INC

129 WORTHINGTON RIDGE
P.O. BOX 1315
BERLIN, CT 06037

PHONE 203 828 8290
FAX 203 828 5845

May 4, 1995

Mr. Martin Vandel
71 Mountain Top Lane
New Haven, CT 06513

Dear Martin:

As a result of our need to reorganize the area in which you work and other related departments we have agreed to work out an agreement to end your employment as of July 7, 1995 with the EIS Brake Parts Division of Standard Motor Products, Inc. Normal severance is two (2) weeks pay but in consideration of your past service and agreement to sign this Title VII of the 1964 Civil Rights Act and Age Discrimination in Employment Act Waiver, we offer the following proposal:

1. You will continue to perform work for the Company on the projects listed on Attachment A through July 7, 1995. During this time you will be considered a full-time employee. You must make a sincere effort to complete these projects and give weekly updates to Mike Paulus as to your progress during this time.

2. You will then receive a lump sum settlement of fourteen (14) weeks of severance pay at your current rate of pay plus any unused or accrued vacation due you. If you secure other full-time employment before July 7th and have satisfactorily completed items #1 and #2 on Attachment A, we will pay you for the time you worked plus four (4) weeks instead of fourteen (14) weeks of severance pay plus your unused or accrued vacation pay.

3. Your medical/dental insurance will be continued for the time you are working on the projects plus either fourteen (14) or four (4) weeks depending upon when you leave the payroll. The cost for continuing medical coverage will be the same to you as though you were actually employed. You may then continue coverage under the provisions of COBRA.

Both parties agree, that from the date you accept this Agreement, not to discuss any of the terms and conditions of this Agreement with any EIS employees or their representatives except on a "need to know basis."

It is understood that this severance package is being offered only on the condition that you agree to waive any and all rights and claims against Standard Motor Products, Inc., its employees, agents or representatives, including those under the federal laws known as the Age Discrimination In Employment Act, and Title VII of the Civil Rights Act of 1964, which have arisen or may arise up to the date of execution of this Agreement. I, Martin Vandel, understand that I give this waiver in return for the severance package outlined above. If any clause or part of this Agreement is found to be non-binding, the rest of the Agreement remains intact and survives.

STANDARD MOTOR PRODUCTS, INC. ADVISES YOU TO CONSULT WITH AN ATTORNEY BEFORE SIGNING THIS AGREEMENT. You will have 21 calendar days from the presentation of this Agreement in order to consider and execute it. You will have an additional seven (7) calendar days, after the Agreement is signed, during which to revoke it.

I have been given this draft of an Age Discrimination In Employment Act and Title VII of the Civil Rights Act of 1964 Waiver for my consideration on this day, May 5, 1995.

I understand that I have 21 days to consider it, and that it shall not become effective unless signed by me on or after May 26, 1995.

Martin Vandel — Employee's Signature

5.5.95 — Current Date

Edward Fuchs — Director of Human Resources

Sandra Drake — Witness

I have considered the above waiver for 21 days or more and I agree to its terms and conditions.

_____ — Employee's Signature

_____ — Current Date

_____ — Director of Human Resources

_____ — Witness

I have considered the Age Discrimination in Employment Act and Title VII of the Civil Rights Act of 1964 waiver which I signed on _____ and I reaffirm my signature at this time.

Today's Date is _____

_____ — Employee's Signature

_____ — Director of Human Resources